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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

In re S.R., a Person Coming Under the
Juvenile Court Law.

B213346

(Los Angeles County
Super. Ct. No. CK12545)

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN AND
FAMILY SERVICES,

Plaintiff and Respondent,

v.

R.P.,

Defendant and Appellant.

APPEAL from an order of the Superior Court of Los Angeles County,
D. Zeke Zeidler, Judge. Affirmed.

John L. Dodd & Associates and Gerard McCusker, under appointment by the
Court of Appeal, for Defendant and Appellant.

Raymond G. Fortner, Jr., County Counsel, James M. Owens, Assistant County
Counsel, and O. Raquel Ramirez, Deputy County Counsel, for Plaintiff and Respondent.

R.P. (Father), father of S.R., appeals from the juvenile court's disposition order finding jurisdiction over S.R. under Welfare and Institutions Code sections 300 and 361,¹ and from the order's requirement that Father take a parenting class. Because we conclude that substantial evidence supported the disposition order, we affirm.

FACTS

On September 28, 2008, just after midnight, the Department of Children and Family Services (DCFS) received a child abuse hotline referral alleging that S.R. was the victim of emotional abuse and neglect. The caller stated that S.R.'s mother, L.R., (Mother) was using drugs in front of S.R., who was then two years old, that S.R. played outside unsupervised, and that there was trash everywhere. Mother had also been seen running after her boyfriend with a knife in one hand, holding S.R. in her other arm.

A social worker and sheriff's deputies arrived at Mother's home around 2:30 a.m. Although the house appeared abandoned, with a large lock on the front door, there was a smaller structure in the back, attached to the main house. It was lit only by a television. The door to the structure was gone, and a curtain hung across the doorway.

When a deputy called inside, a woman named Clara came out. Clara said that Mother was inside, asleep with S.R. The social worker and the deputies entered. The room was filthy, with cockroaches on the floor and walls. On the floor were twin size and queen size air mattresses. Mother was sleeping on the larger mattress with S.R. Clara had trouble waking Mother up. Eventually Mother opened her eyes and stood up, surprised to see the deputies and the social worker.

Mother asked the social worker why they were bothering her in the middle of the night. Although Mother was rocking while she stood, she denied using illegal drugs or being under the influence of alcohol. She told the social worker that the house was her late grandfather's, she was trying to sell it, and that her other children were with her mother, who had full custody. She did not want to explain the reason why. She denied

¹ All subsequent statutory references are to the Welfare and Institutions Code unless otherwise indicated.

being prescribed any medication. She stated that she had been in a mental hospital and was supposed to go to counseling, but did not. Mother provided no information about S.R.'s father.

Clara told the social worker that she had been staying with Mother for nearly a month, while looking for another place to stay. She had never seen Mother use drugs although Mother always looked as if she were under the influence. Clara added that S.R. played outside unsupervised, there was no food in the house, and S.R. sometimes went without eating. Clara said she had never seen Mother abuse S.R., and that Mother's older children were in the custody of their maternal grandmother.

The social worker assessed S.R., finding her healthy, robust, and appropriately dressed, with no signs of abuse.

Mother spoke on the phone to her mother, S.R.'s maternal grandmother. Mother tried to get her to pick up S.R. The maternal grandmother explained to the social worker that she was willing to take care of S.R. With three of Mother's older children² living with her, however, maternal grandmother did not have enough room for S.R. to be placed in her home.

When the social worker explained to Mother that S.R. would be placed in foster care because of the living conditions, Mother's instability, and Mother's prior failure to reunify with her other children, Mother took S.R. into her arms and began to yell and scream "you cannot take my child from me." She walked toward the door and then ran out of the house with S.R. The deputies, prohibited from using physical force, called backup, and Mother was apprehended at a shopping center a mile away. S.R. was taken into protective custody and then placed in the custody of the social worker.

That afternoon, the social worker received a message from Father, who identified himself as S.R.'s biological father and stated that he wanted full custody. Father claimed

² Mother had three children with other fathers. Her parental rights had been terminated in 1999 and in 2003, and the maternal grandmother had adopted all three children (although Mother initially reported to the social worker that the maternal grandmother had custody of two children).

to have an appropriate home. Father stated that Mother had mental health issues and needed to seek help, although he could not make a diagnosis. Father said he did not know whether Mother was using illegal drugs.

DCFS filed a section 300 petition on October 1, 2008. At the detention hearing that day, the juvenile court found Father to be S.R.'s presumed father, ordered S.R. detained, and gave DCFS discretion to detain S.R. with a relative or her parents.

The investigating social worker assessed Father's home on October 15. Father, who had a history of drug-related arrests, had participated in a Proposition 36 program, and was still under the supervision of the Los Angeles County Department of Probation. He was in the process of moving into a new home on October 18 with a friend and her teenaged grandson. The friend could babysit S.R.

At a prerelease investigation hearing on October 17, the court ordered S.R. detained in foster care, but also ordered that she be released to Father when he obtained smoke detectors, agreed to random drug testing, and regularly attended Narcotics Anonymous meetings.

DCFS filed a first amended petition on October 28, 2008, alleging under section 300 subdivision (b) that Father's failure to reunify with his two other children endangered S.R.'s physical and emotional health and safety. The petition also contained three allegations against Mother.

The accompanying Jurisdiction/Disposition Report detailed Father's criminal history and reported the results of an interview with Father. Father had two other children with Mother, female twins with special needs. The twins had been removed from Father's and Mother's care at birth in 2004, when Mother tested positive for drugs. The twins were in the custody of Father's sister, their paternal aunt, who was in the process of adopting them.

Father insisted Mother was "not really a drug user," "more of a binge drinker." He stated that her drug of choice used to be methamphetamine. He last suspected that Mother used methamphetamine five to six months earlier because she would stay up all night. "I guess she did sometimes (take care of the baby while high on

methamphetamine). I guess she had to do it if I had to work.” It did bother him that Mother took care of S.R. while she was high, but Father relied on a neighbor and on his teenaged son to keep an eye on S.R. He said that, while she loved the child, Mother had “no mothering instincts.” He described Mother’s drinking binges, after which she would pass out.

Father was arrested for possession of a controlled substance in 2000 when police found a methamphetamine pipe in the bathroom of a motel where Father and Mother were staying. Father claimed the pipe was Mother’s.

The paternal aunt who was in the process of adopting the twins described Mother as an alcoholic. She had not seen her taking drugs. She thought Mother drank during the day while Father was at work. Mother had monitored visits and had visited once in four months. The maternal grandmother who had adopted Mother’s three children by other fathers stated that she thought Mother was drinking but had no idea whether she was using drugs. The report confirmed that Father had participated in a Proposition 36 program, and that all the drug tests were negative.

Father had five children from a previous marriage in addition to the three children with Mother. He stated that he had decided to relinquish his parental rights to the special needs twins because he wanted his sister to take care of them and felt he could not provide adequate care for the girls because one was autistic and the other suffered from heart and lung problems. Father stated he had a history of drug use, including methamphetamine and marijuana. He had never received mental health services, and worked full time as an ironworker. Father believed he could care for S.R.’s needs and that he deserved a chance, and “would be willing to participate in random drug testing, counseling, parenting classes, and substance abuse programs [as] necessary.” S.R. was currently living with Father, with child care when Father was at work, and Father was participating in random drug testing.

The report recommended that the court declare S.R. a dependent, offer no family reunification services to Mother, and offer the services to Father. The report also recommended monitored visitation for Mother, and for Father, a parent education

program, weekly random drug testing, substance abuse treatment if he tested positive, and individual counseling.

At the disposition hearing on December 10, 2008, Father and Mother were present. S.R. was on Father's lap, and the juvenile court had to stop proceedings to try to quiet S.R., who was actively moving about. The court stated that its tentative ruling was to "change [the allegation against Father under section 300 subsection b] to read something to the effect of the father knew or should have known of the mother's inability to provide regular care and supervision and failed to or was unable to protect." The trial court offered to let Father's counsel reopen or "I'll continue it for you to provide evidence on the court's tentative, that's the risk you run in a trial, is the court can amend it to conform to proof, but I do have concern about due process but I can put the trial over for you to prepare to address that. For now I'm amending it to conform to proof. That child [S.R.'s] father, [R.P.], knew or should have known of the mother's drug use and inadequate supervision and unsanitary home and failed to or was unable to protect the child."

Father's counsel asked for one moment to "clarify with the father and I'll argue it right now." The court agreed and added that it would also amend the allegation to include "The father's failure or inability to [*sic*] endangers the child's physical and emotional health and safety and places the child at risk of physical and emotional harm, damage and danger." The amended allegation read "the child [S.R.'s] father . . . knew or should have known of the mother's illicit drug use, inadequate supervision, unsanitary home, and failed to or was unable to protect the child. The father's failure or inability endangers the child's physical and emotional health and safety, and places the child at risk of physical and emotional harm, damage, and danger."

The court again asked Father's counsel if she wanted a continuance to prepare, and she replied, "I'm ready today. I'll just do a stipulation, if they won't accept the stipulation, then I'll put the father on the stand." Counsel then stipulated that Father's testimony would be "the father had been separated from the mother for about five or six months. That he was trying to get an attorney to see what would be the best way from

[sic] him to try to get the child from the mother. He would go over to the mother's house as often as he could, bring food, see how the child was and make sure that the child was safe."

Counsel then argued that Father had been taking care of S.R. since October and had been very honest about his past. Counsel for DCFS replied that "the fact that he left [S.R.] in a dangerous situation with the mother speaks to his parenting skills, speaks to his judgment at the time [A]s of today that was not that long ago that those circumstances occurred, but for the court changing the jurisdiction the child would still be there." The court agreed that the involvement of DCFS and the juvenile court had been necessary to remove S.R. from the situation.

The trial court found jurisdiction over S.R. under section 300, found true the counts against Mother, and found true the section 300, subdivision (b) allegation, as amended, against Father.³ The court recommended that S.R. be placed in Father's home with family maintenance services to Father. Father's counsel stated that Father would cooperate, but "[a]s far as a parenting class is ordered, it's apparent the child has been with the father for almost two months and there does not seem to be any issues, so I don't really know if this case—if it's relevant that the father have a parenting class, but he will do so. I would object to that, just ask the Father cooperate with the Department and he will, he has done so for the past two months, that's pure evidence he will continue to do so."

The judge ordered S.R. placed in Father's home, ordered family maintenance services, and stated "The father is to participate in DCFS approved programs of parenting education, that could be a parenting class or an interactive parenting program, such as mommy and me type of program. She's a little active, it might be helpful."

³ The trial court sustained the three counts against Mother and granted family reunification services. Mother was ordered to complete parenting education programs, drug and alcohol rehabilitation, individual counseling, and a psychiatric or mental health assessment, and was given twice-weekly monitored visitation with S.R.

DISCUSSION

I. Substantial evidence supported the jurisdictional finding.

Father argues that insufficient evidence supported the court's finding sustaining dependency jurisdiction over S.R. under section 300, subdivision (b), which provides that a child may be found a dependent where "[t]he child has suffered, or there is a substantial risk that the child will suffer, serious physical harm or illness, as a result of the failure or inability of his or her parent or guardian to adequately supervise or protect the child, . . . or by the willful or negligent failure of the parent or guardian to provide the child with adequate food, clothing, shelter, or medical treatment, or by the inability of the parent or guardian to provide regular care for the child due to the parent's or guardian's mental illness, developmental disability, or substance abuse." To the contrary, the court's conclusion that Father "knew or should have known of the mother's [illicit] drug use, inadequate supervision and unsanitary home and failed to or was unable to protect the child," is amply supported by the record.

"The substantial evidence standard is a difficult hurdle for an appellant 'If there is any substantial evidence, contradicted or uncontradicted, which will support the judgment, we must affirm.' [Citation.] A reviewing court is in no position to judge the credibility of witnesses or reweigh the evidence, and therefore must resolve all evidentiary conflicts in favor of the juvenile court's findings." (*D.M. v. Superior Court* (2009) 173 Cal.App.4th 1117, 1128 [2009 WL 977278 at p. *7].) "[A] trial court's determination will not be disturbed unless it exceeds the bounds of reason. [Citation.]' . . . 'The ultimate test is whether it is reasonable for a trier of fact to make the ruling in question in light of the whole record.'" (*In re Savannah M.* (2005) 131 Cal.App.4th 1387, 1393–1394.)

Father argues that, as of the time of the hearing, there was not substantial evidence that S.R. was at risk that he would fail to protect her. Father is correct that the test is the circumstances at the time of the hearing. "While evidence of past conduct may be probative of current conditions, the question under section 300 is whether circumstances *at the time of the hearing* subject the [child] to the defined risk of harm.' [Citation.]

‘Thus[,] *previous acts of neglect, standing alone, do not establish a substantial risk of harm; there must be some reason beyond mere speculation to believe they will reoccur.* [Citations.]’” (*In re Savannah M.*, *supra*, 131 Cal.App.4th at p. 1394, italics in original.) “[T]he purpose of section 300, subdivision (b) is to protect the child from a substantial risk of *future* serious physical harm and that risk is determined as of the time of the jurisdictional hearing.” (*Id.* at p. 1397.)

Similarly, a one-time occurrence of neglect or abuse by a caretaker or parent may not be sufficient evidence to show a substantial risk of future harm. (*In re Savannah M.*, *supra*, 131 Cal.App.4th at p. 1398; *In re Rocco M.* (1991) 1 Cal.App.4th 814, 825.)

In this case, however, the evidence showed that Father had failed to protect S.R. from Mother’s neglect, drug use, binge drinking, mental health issues, and unsanitary home for the “five or six months” he had been separated from Mother and even before, when he left S.R. in Mother’s care while he worked, with only a neighbor or his teenaged son to keep an eye on S.R. Father also stated that he suspected that Mother was using methamphetamine when he separated from her, that he guessed she did take care of S.R. while high on methamphetamine while he was at work, and that Mother would pass out after her drinking binges and had “no mothering instincts.”

This evidence shows a longstanding pattern of failing to protect S.R. from a risk of physical harm while under Mother’s care. Father knew of the risk to S.R. and failed to do anything to protect the child, leaving S.R. in Mother’s care in filthy and unsafe surroundings. Father took no action to remove S.R. from the dangerous situation until a call to a child abuse hotline brought Mother to the attention of DCFS.

The evidence supports the conclusion that Father’s lack of judgment persisted at the time of the hearing. In particular, at the hearing Father’s stipulated testimony was that he had been “trying” to get an attorney to gain custody of S.R. and visited “as often as he could.” The omission from the stipulated testimony of any recognition that his past actions were insufficient suggests that, at the time of the hearing, Father did not appreciate that his past inattentiveness was a problem. This suggests a risk that he will return to his longstanding pattern of neglecting S.R.

Father argues that the mere fact that S.R. was in Father's custody at the time of the hearing, under DCFS supervision, makes Father's previous abdication of responsibility irrelevant. The trial court found that Father's past failures to protect S.R. from what he knew to be Mother's lack of supervision, unsanitary home, drug use, and binge drinking required the action taken. We do not reweigh the evidence. (*D.M. v. Superior Court*, *supra*, 173 Cal.App.4th at p. 1128 [2009 WL 977278 at p. *8].)

Substantial evidence supported the trial court's conclusion that there was a substantial risk, at the time of the hearing, that S.R. would suffer in the future from Father's failure to protect her from the neglect of a caretaker.

II. Substantial evidence supported the order's requirement that Father take parenting classes.

Father argues that there is insufficient evidence to support the order requiring him to attend parenting education courses. "The juvenile court has wide latitude in making orders necessary for the well-being of a minor . . . designed to eliminate the conditions that brought the minor to the attention of the court." (*In re Jasmin C.* (2003) 106 Cal.App.4th 177, 180; § 362, subd. (a).)

We review the record to determine whether substantial evidence supports the court's implied conclusion that Father's attendance in parenting classes is "reasonably necessary to avoid a repetition" of the neglect suffered by S.R. (*In re Jasmin C.*, *supra*, 106 Cal.App.4th at p. 180.) "The court has broad discretion to determine what would best serve and protect the child's interest and to fashion a dispositional order in accord with this discretion. [Citations.] We cannot reverse the court's determination in this regard absent a clear abuse of discretion." (*In re Christopher H.* (1996) 50 Cal.App.4th 1001, 1006.)

No abuse of discretion appears here. Father was an offending parent under the petition, which alleged that he failed to protect two-year-old S.R. from the danger she was placed in by Mother's drug use, binge drinking, mental problems, filthy home, and failure to supervise. This is not a case of parenting classes imposed on a nonoffending parent "just because that's something we tend to do to people." (*In re Jasmin C.*, *supra*,

106 Cal.App.4th at p. 181.) Father had left S.R. with Mother in spite of what he knew about the conditions of Mother's home and what he described as her complete lack of parenting instincts. The evidence supports the order requiring Father to attend and complete a parent education class.⁴

DISPOSITION

The December 10, 2008 jurisdictional and dispositional order is affirmed.

NOT TO BE PUBLISHED.

MILLER, J.*

We concur:

MALLANO, P. J.

ROTHSCHILD, J.

⁴ We note that Father, when interviewed by the social worker, initially indicated he was willing to participate in a parenting class.

* Judge of the Los Angeles Superior Court assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.